

Message Text

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C O N F I D E N T I A L SECTION 01 OF 04 OECD PARIS 11111

EXCON

E.O. 11652 XGDS1

TAGS: ESTC, COCOM

SUBJECT: REVIEW OF IL 1565 - COMPUTERS (APRIL 30 SESSION)

REFS. A. COCOM DOC REV (71) 1565/W.P. 3

B. COCOM DOC REV (71) 1565/19

C. OECD PARIS 10781

D. OECD PARIS 11087

SUMMARY: THE FIREWORKS BEGAN WITH APRIL 30 DISCUSSION OF NOTE 5. FRENCH AND DUTCH QUESTIONED ITS UTILITY VIS-A-VIS GENERAL EXCEPTIONS PROCEDURE, AND MOST SAW A RETRO-GRADE MOVE WITH INSTITUTION OF RIGHT-TO-OBJECT CLAUSE. MOST DELEGATIONS COULD NOT SWALLOW THE USE OF "CIVIL" IN PLACE OF "NON-STRATEGIC" USED UP TIL NOW IN NOTES TO THIS ITEM. THERE WAS ALMOST UNIVERSAL RESERVE ON CONCEPT OF UNLIMITED ACCESS, AND REQUIREMENT FOR UNLIMITED QUARTERLY VISITATION PRODUCED EVEN SHARPER NEGATIVE REACTIONS. ABILITY OF US TO RESPOND EFFECTIVELY WAS COMPLICATED BY RECENT SUBMISSION OF MAJOR EXCEPTIONS CASES IN WHICH THE SAFEGUARDS APPEARED TO MANY TO BE LESS STRINGENT THAN THOSE PROPOSED FOR NOTE 5. ACTION REQUESTED: EARLY GUIDANCE ON ISSUES RAISED ABOVE, AS SPECIFIED IN PARA 11. END SUMMARY.

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1. DISCUSSION STARTED ON NOTE 5 (REF A) ON APRIL 30. BELGIUM RAISED QUESTION RE "FAVORABLY CONSIDER: IN HEADING, "AUTOMATICALLY APPROVE" IN FIRST PARA IN SOU AND "RIGHT TO OBJECT" PARA OF SOU. COULD OBJECTIONS BE OF GENERAL NATURE OR ONLY ON THE APPLICABILITY OF NOTE 5? US REPLIED THAT FOR CERTAIN SYSTEMS BELOW PARAMETERS IN SOU, PC'S COULD RAISE QUESTIONS OR PRESENT INFORMATION BUT THE REQUESTING GOVERNMENT HAD FINAL AUTHORITY TO APPROVE EXPORT. FOR SYSTEMS WITHIN NOTE 5 BUT EXCEEDING LIMITS OF THE SOU, US FELT THAT IT HAD TO RESERVE THE RIGHT TO OBJECT TO CERTAIN UNIQUE CASES BASED ON ADDITIONAL INTELLIGENCE INFORMATION, ON THE END USE OR END USER OR ON THE APPROPRIATENESS OF THE EQUIPMENT TO THE END USE (ESSENTIALLY ON ASSESSMENTS MADE IN NEXT TO LAST PARA OF SOU), AS WELL AS ON THE APPLICABILITY OF NOTE 5 TO THE GIVEN TRANSACTION. THE US STATED IT DID NOT INTEND TO RAISE OBJECTIONS ARBITRARILY BUT BECAUSE OF PERFORMANCE OF SUCH SYSTEMS IT COULD NOT AGREE TO AUTOMATIC APPROVAL. (US AUTHORITIES SHOULD CAREFULLY CHECK RECORD OF DISCUSSION WHEN AVAILABLE TO SEE WHETHER US INTENTIONS CORRECTLY STATED.) FRANCE AND UK FELT PARAMETERS IN SOU WERE A STEP BACKWARD AND GAVE APPEARANCE OF 1968 APPROACH TO IL 1519. BELGIUM FELT NOTE 5 WAS ONLY AN ADVANTAGE IF 30 DAY PERIOD WAS FIXED. US STATED THAT ITS INTENTION WAS A FIXED 30 DAY PERIOD WITHIN WHICH IT WAS WILLING TO "FISH OR CUT BAIT". NETHERLANDS FELT CONDITIONS WERE SO COMPLEX THAT ONLY MAJOR MANUFACTURER'S COULD TAKE ADVANTAGE OF NOTE 5. JAPAN, NETHERLANDS, ITALY, GERMANY, AND CANADA ACCEPTED HEADING, UK AD REF. BELGIUM OPENMINDED AND FRANCE RESERVED ON HEADING AND HAD GENERAL RESERVE ON THE NOTE.

2. ON NOTE 5 (A) AND (B), THE UK MAINTAINED ITS VIEW ON THE USE OF THE WORD "CIVIL" (PARA 150 AND 257, REF B). US RAISED AGAIN THE QUESTION AS TO WHAT APPLICATIONS WERE NON-CIVIL AND NON-STRATEGIC (PARA 256 AND 258, REF B). MUCH OF THE DISCUSSION ON REF B ON THIS POINT WAS RESTATED. UK GAVE AT ONE POINT AS AN EXAMPLE, A COMPUTER FOR A MILITARY HOSPITAL, AS BEING CONFIDENTIAL

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NON-STRATEGIC BUT NOT CIVIL. UK ALSO STATED THAT THEIR PROBLEM WAS ALSO ONE OF PRESENTATION TO THEIR AUTHORITIES, TO INDUSTRY, TO PARLIAMENT, AND TO THE PUBLIC AT LARGE. LATER, BILATERALLY, UKDEL POINTED OUT PART OF THE PROBLEM WITH USE OF "CIVIL" IN NOTE 5 WAS THAT IT WOULD BE NEW TO THE ITEM AND HENCE COULD BE INTERPRETED BY INTERESTED MINISTERS AS AN UNWARRANTED STRENGTHENING OF THE EMBARGO. ON THE OTHER HAND, USE OF THE SAME

"CIVIL" CONCEPT IN NOTE 10 WOULD BE LESS OF A PROBLEM
SINCE THERE WAS AN OBVIOUS CONNECTION TO THE TELECOM-
MUNICATIONS ITEMS WHERE THIS PHRASEOLOGY IN THE NOTES

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HAD A LONG BACKGROUND. WE ASKED UK HOW IN THEIR EXAMPLE
OF A MILITARY HOSPITAL, THEY COULD SATISFY THE CONDITION
IN SOU WHETHER THE END USERS "ARE AFFILIATED WITH ORGANI-
ZATIONS THAT MIGHT FOSTER DIVERSION TO STRATEGIC
PURPOSES". NO GOOD ANSWER WAS FORTHCOMING. AGAIN BI-
LATERALLY, US SUGGESTED WHETHER PRESENTATIONAL
PROBLEM COULD NOT BE SOLVED BY USING IN SUBITEM (B)
WORDING FROM PARA 1 (A) OF GENERAL EXCEPTION PROCEDURES
(PARA 152, REF B). UK INDICATED THEY WOULD STUDY POSSI-
BILITY. RETURNING TO COMMITTEE'S DISCUSSION, THE UK RE-
SERVED FOR THE ABOVE REASONS AS DID FRANCE, CANADA, AND
BELGIUM. THE NETHERLANDS, JAPAN, ITALY, AND GERMANY
AGREED. BASED ON A BELGIUM SUGGESTION, COULD US AUTHOR-
ITIES ACCEPT "NON-STRATEGIC" IN SUBITEM (A) SINCE IT IS
ONLY DESCRIBING USE IN THE WEST RATHER THAN IN BLOC.
THIS MAY EASE PROBLEM A LITTLE, BUT BASIC ISSUE IS
SUBITEM (B). COULD UK, FRENCH AND NETHER-
LANDS STATEMENTS (PARA 150, 151 AND 153, REF B) SERVE AS
BASIS FOR AN ACCEPTABLE DEFINITION FOR "NON-STRATEGIC",

I. E., RELATION TO STRATEGIC CRITERIA? ALSO, IS IDEA OF USING WORDING FROM EXCEPTION PROCEDURES (ABOVE) WORTH PURSUING?

3. ON NOTE 5 (C) ALL DELS AGREED AD REF PENDING RESOLUTION
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TION OF SUBITEM (C)(4) ON MESSAGE AND DATA COMMUNICATION EQUIPMENT (REF C). ALL DELS AGREED ON NOTE 5(D) HEADING AND (D)(II). UK, FRANCE, AND CANADA RESERVED ON (D) (I) BECAUS OF "CIVIL", OTHER DELS AGREED.

4. ON (D)(III), GERMANY PROPOSED LIMITING "RIGHT OF ACCESS" TO THREE YEARS BECAUSE OF DIFFICULTIES OF BLOC CUSTOMERS ACCEPTING UNLIMITED ACCESS AND GETTING SUCH ACCESS WRITTEN INTO CONTRACTS. JAPAN COULD ACCEPT THREE YEARS BUT WAS OPENMINDED ON TIME AS LONG AS TIME WAS FIXED RATHER THAN UNLIMITED. LONG DISCUSSION ENSUED THEN ON NEED OF UNLIMITED ACCESS AS FAR AS CONTROLLING FUTURE DISPOSITION OF EQUIPMENT AND SPARES, POLITICAL PROBLEMS IN EAST-WEST TRADE RELATIONS, LEGALITY OF UNLIMITED CONTRACTS AND OTHER PROBLEMS. IT WAS DURING THIS DISCUSSION THAT FRANCE RAISED ISSUE OF US KAMA CASE, STATING THAT THEY COULD NOT ACCEPT ANY CONDITIONS MORE RESTRICTIVE THAN RECENTLY SUBMITTED LARGE US EXCEPTION CASES. PARTICULARLY, THEY COULD NOT ACCEPT LONGER PERIOD OF ACCESS THAN US PROPOSAL. SUBJECT TO CONFIRMATION FROM WASHINGTON (HEREBY REQUESTED URGENTLY), US STATED THAT EVERY MAJOR US EXCEPTION CASE INVOLVED A SIGNED STATEMENT FROM THE CUSTOMER CONFIRMING THE RIGHT OF ACCESS FOR AN UNLIMITED TIME. WHILE THE US HAS NOT MENTIONED THIS AND OTHER FEATURES OF ITS SAFEGUARDS IT HAS BILATERALLY REQUIRED THESE ON OTHER COUNTRY'S CASES SUBJECT TO US LICENSING. THE FRENCH SUGGESTED THAT IN FUTURE US SHOULD MENTION CONDITIONS APPLIED MORE FULLY TO CLARIFY TYPES OF US CONTROLS. OBVIOUSLY, THE KAMA AND AEROFLOT CASES HAVE DISTURBED OTHER PC'S PARTICULARLY SINCE IT APPEARS IN MANY RESPECTS THAT THE SAFEGUARDS DISCLOSED TO THE COMMITTEE ARE LESS STRINGENT THAN WHAT THE US IS PROPOSING IN NOTE 5. WITHOUT FULLY DISCLOSING ALL SAFEGUARDS IT IS DIFFICULT FOR DEL TO ENTIRELY JUSTIFY DIFFERENCES BETWEEN CASES AND NOTE 5. IT CERTAINLY WOULD HAVE BEEN SIMPLER TO DEAL WITH NOTE 5 AND GAIN ACCEPTANCE IF KAMA AND AEROFLOT CASES WERE NOT IN COMMITTEE. CERTAINLY DISCLOSURE OF REQUIREMENTS OF AND DETAILS OF SIGNED END USER STATEMENT WOULD HAVE SHOWN US APPROACH AND THE CONDITIONS IT WAS APPLYING TO ITS MANUFACTURERS AND BEING ACCEPTED BY BLOC CUSTOMERS (SEE ALSO REF D,
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PARA 4).

5. ON NOTE 5 (D)(III) GERMANY, FRANCE AND JAPAN RESERVED FOR A FIXED LIMIT TO RIGHT OF ACCESS (POSSIBLY A FOUR YEAR LIMIT). UK (EXCEPT FOR CIVIL), NETHERLANDS AND CANADA (ALSO EXCEPT FOR CIVIL) ACCEPTED. BELGIUM AND ITALY NOT PRESENT. ALL DELS AGREED TO (D)(IV). MOST URGENT WE RECEIVE INSTRUCTIONS ON HOW TO DEAL WITH TIME LIMIT ON "RIGHT OF ACCESS". SINCE MOST BLOC CONTRACTS PROVIDE FOR MANUFACTURERS TO GUARANTEE SPARES AVAILABILITY FOR 10 YEARS, THIS TIME PERIOD COULD BE JUSTIFIED AS TO LIMIT OF "RIGHT OF ACCESS". ALTERNATELY, IF A SHORTER PERIOD MUST BE AGREED TO IN ORDER TO GAIN ACCEPTANCE OF NOTE 5 (SAY 6 YEARS, SEE PARA 8 AND 9 BELOW) THEN US COULD STATE THAT IF "RIGHT OF ACCESS" WAS STILL APPROPRIATE AFTER THAT SHORTER PERIOD, THE US WOULD NOT APPROVE ADDITIONAL REQUESTS FOR SPARES UNLESS THE REQUESTING GOVERNMENT UNDERTAKES THAT THEIR MANUFACTURER HAS VISITED THE COMPUTER AND THEY CAN VERI-

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FY THE CONDITIONS OF NOTE 5 (D)(I), (II) AND (IV).
MAINTAINING CURRENT US POSITION STILL VIABLE ALTERNATIVE,
BUT MUCH HARDER TO SELL GIVEN THE STRONG VIEWS EXPRESSED
BY OTHER DELS (OBVIOUSLY UNDER INSTRUCTIONS) ON THIS IS-
SUE.

6. ALSO ON (D)(III), UK RAISED PROPOSAL (PARA 270, REF
B LAST SENTENCE) TO INSERT "DURING NORMAL WORKING HOURS"
AFTER WORD "ACCESS". UK ALSO REFERRED TO US COUNTERPRO-
POSAL (REF A) FOR NOTE 8 (D)(3) WHERE SIMILAR WORDING
USED. AFTER SOME COMMENTS FROM US, UK PROPOSED RATHER
"ANY TIME THE COMPUTERS ARE OPERATING". INSTRUCTIONS
REQUIRED AS TO WHETHER WE CAN ACCEPT EITHER OR PROPOSE
ALTERNATE WORDING. OTHER DELS DID NOT GIVE VIEWS ON
PROPOSAL BECAUSE OF COMPLEXITY OF DISCUSSION (PARA 4 A-
BOVE) EXCEPT JAPAN WHO COULD ACCEPT EITHER WORDING.

7. ON NOTE 5 (E)(I), UK ASKED WHY THEIR PROPOSAL (PARA
276, REF B) TO DELETE (E)(I) NOT ACCEPTED BY US AND WHAT
WAS JUSTIFICATION OF US POSITION. US STATED THAT
IT WAS NOT INTENT TO CONTROL COMMONLY
AVAILABLE UNEMBARGOED SPARES BUT RATHER THE GENERALLY
UNIQUE SPARES PRODUCED OR PROCURED AND PROVIDED BY THE
SUPPLIER. UK COULD AGREE WITH INTENTION AND PROPOSED
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WORDING "SPARE PARTS PROVIDED BY THE SUPPLIER ARE KEPT
UNDER HIS CONTROL". WHEN USDEL STATED HE WOULD FAVOR-
ABLY RECOMMEND WORDING TO US AUTHORITIES, UK A LITTLE
UPSET (MORE LATER) BUT SAID THEY COULD ACCEPT US WORDING
WITH ABOVE UNDERSTANDING. REQUIRE INSTRUCTIONS ON
ACCEPTABILITY OF ABOVE STATEMENT OF INTENTIONS. ON (E)
(II) ALL DELS AGREED.

8. ON NOTE 5 (E)(III), ISSUE OF TIME LIMIT ON VISITA-
TIONS SUBJECT OF EXTENDED DISCUSSIONS WITH STRONG PO-
SITIONS TAKEN BY MOST DELS ON NEED TO SET FIXED LIMIT.
MAJOR ISSUES ARE NEED FOR COMPANIES TO INCLUDE COST OF
VISITS IN PRICE OF COMPUTERS AND EXTENDED PERIOD OF VI-
SITS CUT INTO ALREADY LOW PROFIT MARGINS. GERMAN DEL
STATED THAT TYPICAL TRIP TO VISIT A 4 MILLION DM SYSTEM
WOULD COST 3 THOUSAND DM. FIVE YEARS OF MONTHLY VISITS
WOULD BE 180 THOUSAND DM OR ABOUT 5 PER CENT OF SYSTEM
VALUE. UK INDICATED THAT QUARTERLY VISITS WOULD COST
1500 POUNDS PER YEAR AND OVER 10 YEAR PERIOD WITH INFLA-
TION WOULD EXCEED TOTAL PROFIT MARGIN. US REPLIED THAT
ISSUE WAS NOT A COST ISSUE BUT A SECURITY ISSUE. ON
COST ISSUE FIRST, COSTS ARE SPREAD OVER VISITS TO NUMBER
OF COMPUTERS ON ONE TRIP SO PER SYSTEM COSTS SMALLER AND

SECOND, MANUFACTURERS FACTOR THESE VISIT COSTS INTO THEIR SALES COSTS AND THEY ARE SMALL FRACTION OF THESE SALES COSTS. MANUFACTURERS NOW MUST BASE THEIR PRICE ON VERY HIGH AND DIFFICULT TO ESTIMATE SALES COSTS FOR BLOC WHICH ARE A PART OF ANY MARKETING PLAN TO ENTER THAT AREA. THEREFORE, COSTS ARE NOT AN OVERRIDING FACTOR, SECURITY IS. US STATED THAT BASIC CRITERIA SHOULD BE THE STATUS OF THE LIST AT ANY GIVEN TIME WHICH REPRESENTS COMMITTEE VIEW AS TO WHAT SAFEGUARDS ARE APPROPRIATE AT ANY GIVEN TIME. UK PROPOSED COMPROMISE, MONTHLY VISITS FOR THREE YEARS, THEN QUARTERLY VISITS FOR THREE YEARS OR A TOTAL PERIOD OF SIX YEARS OF VISITS.

WHEN US STATED THAT IT WOULD HAVE TO REFER PROPOSAL TO US WITH LITTLE HOPE CHANGE, UK STATED THEY WERE UPSET. THEY HAD HOPED THAT US WAS PREPARED TO NEGOTIATE TO ACHIEVE RESOLUTION OF 1565, BUT IF EVERY ISSUE HAD TO BE REFERRED TO WASHINGTON, 1565 WOULD NEVER BE RESOLVED. US EXPLAINED THAT COMMENTS OF ALL THE DELS
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WERE CAREFULLY REVIEWED IN WASHINGTON AT HIGH LEVELS AND PROPOSALS REVIEWED AT HIGHER LEVELS AND W.P. 3 WAS RESULT. TO TRY TO MAKE MAJOR CHANGES NOW WOULD AGAIN REQUIRE HIGHER LEVEL APPROVAL. AFTER THIS EXCHANGE, FRANCE RESERVED ON US PROPOSAL, AND PROPOSED QUARTERLY VISITS FOR THREE YEARS AND SEMI-ANNUAL VISITS FOR TWO MORE YEARS. CANADA SAID EITHER BI-MONTHLY OR QUARTERLY WAS SUFFICIENT BUT GAVE NO TIME LIMIT. NETHERLANDS REITERATED THAT NOTE WAS ONLY FOR BIG COMPANIES, I.E., US BIG COMPANIES, AND THEY WOULD NOT USE IT. THEREFORE, THEY HAD AN UNSYMPATHETIC OPENMINDEDNESS TO US PROPOSAL. JAPAN RESERVED ON US PROPOSAL AND WAS SYMPATHETIC TO OTHER PROPOSALS BUT WANTED MORE LIBERALIZED PARAMETERS IN NOTE 5 AND WOULD THEREFORE BE WILLING TO COMPROMISE. GERMANY RESERVED ON US AND UK PROPOSALS AND COULD ACCEPT FRENCH SUGGESTION.

9. MOST URGENT WE RECEIVE INSTRUCTIONS ON HOW TO PROCEED ON VISITATION ISSUE. UK PROPOSAL MAY OFFER A WORK-

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ABLE COMPROMISE SINCE IT MAY BE POSSIBLE TO JUSTIFY MONTHLY VISITS TO GERMANY AND FRANCE. FRENCH PROPOSAL AGREED TO BY GERMANY COVERED 5 YEARS. THE DIFFERENCE IN EFFECT IS COST. BASED ON GERMAN FIGURES, THE UK PROPOSAL WOULD COST 144 THOUSAND DM AND THE FRENCH PROPOSAL 48 THOUSAND DM OR A DIFFERENCE OF ABOUT \$30 THOUSAND OVER SIX YEARS FOR A SYSTEM WORTH WELL OVER A MILLION DOLLARS. CERTAINLY, IN PART, THIS COST CAN AND WILL BE ABSORBED AS PART OF CONTINUING ADDITIONAL SALES OF SPARES AND EQUIPMENT TO UPGRADE THE SYSTEM. ON SECURITY SIDE, THE RISK IN UK PROPOSAL IS THAT AFTER SIX YEARS THERE MAY STILL BE JUSTIFICATION FOR MAINTAINING SOME PERIODIC VISITATION. FOR SOVIET UNION, THIS RISK MAY BE SMALL BECAUSE THEY SHOULD HAVE ADVANCED SUFFICIENTLY THAT SUCH SYSTEMS MAY NOT REQUIRE VISITATION. HOWEVER, FOR CHINA THIS MAY NOT BE TRUE AND THERE MAY BE SOME NEED TO MAINTAIN A NOTE 5 AND VISITS FOR THAT PURPOSE. THIS POSSIBILITY WILL HAVE TO BE JUDGED BY WASHINGTON. IF UK APPROACH ACCEPTABLE THERE IS STILL NO REASON WHY UNLIMITED VISITATIONS CANNOT BE APPLIED TO EXCEPTION CASES.

10. DISCUSSIONS CONTINUE ON NOTE 5 ON MAY 2.

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11. ACTION REQUESTED: INSTRUCTIONS URGENTLY REQUIRED ON "CIVIL" - "NON-STRATEGIC" ISSUE (PARA 2), TIME LIMITS ON "RIGHT OF ACCESS" (PARA 5), AND TIME LIMITS ON

VISITATION (PARA 9). ALSO REQUIRE INSTRUCTIONS ON UK
PROPOSALS IN PARA 6 AND 7 (OR US INTENTIONS ON LATTER).
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